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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/977,374	11/24/97	BAKKER	W GLP006/JTN

IM62/0620

FAY, SHARPE, BEALL, FAGAN,
MINNICH & MCKEE, LLP
1100 SUPERIOR AVENUE
SUITE 700
CLEVELAND OH 44114-2518

EXAMINER
WATKINS III, W

ART UNIT	PAPER NUMBER
1772	

DATE MAILED: 06/20/00 ²³

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 23

Application Number: 08/977,374
Filing Date: Nov. 24, 1997
Appellant(s): William J. Bakker

MAILED

JUN 19 2000

GROUP 1700

Brian G. Bembenick
Thomas E. Kocovsky
For Appellant

EXAMINER'S ANSWER

This is in response to appellant's brief on appeal filed May 12, 2000.

(I) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

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(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows: serial number 08/699,332 has matured into U.S. Patent 5,993,942. As a result the obviousness type double patenting rejection is no longer provisional. The claims given for the '942 patent in the rejection below, correspond to the claim numbers of the '332 application cited in the instant final rejection. The '332 claims having been renumbered for publication.

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(7) *Grouping of Claims*

The rejections of claims 36-46 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

A substantially correct copy of appealed claim 36 appears on page 11 of the Appendix to the appellant's brief. The minor error is as follows: after the phrase "to transfer heat to" in line 6 of claim 36 in the Appendix, the phrase --said downwardly extending portion upon-- needs to be inserted. This phrase was inadvertently deleted by applicant between the March 1, 1999 and Nov. 6, 1998 amendments. Formal correction of the error will take place before the case is allowed.

A substantially correct copy of appealed claim 44 appears on page 12 of the Appendix to the appellant's brief. The minor error is as follows: "said" should be inserted before "radiant" in the last line of the claim in the appendix.

A substantially correct copy of appealed claim 46 appears on page 13 of the Appendix to the appellant's brief. The minor error is as follows: "said" should be inserted before "radiant" in the second to the last line of the claim in the appendix.

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(9) Prior Art of Record

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

5,993,942 ✓	Bakker et al.	11-1999
3,760,154 ✓	Konger	9-1973
5,113,479 ✓	Anderson et al.	5-1992
AU 27,337	Heilman et al.	3-69

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 36-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heilman et al. (Australia 27,337) in view of Konger (U.S. 3,760,154) further in view of Anderson et al. (U.S. 5,113,479).

Heilman et al. teach a film which extends over the rim of a container and is heat shrunk onto the container by applying energy which may be in the form of infrared radiation to the edge first while the top is shielded, then to the top as an option to further tighten the film (page 10). The film may be transparent (page 3). Konger teaches the use of infrared radiant heat directly on the overhanging edge of a transparent shrink wrap film in order to form a cover over an object to be packaged, the direct radiation on the edge is intense (abstract,

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col. 2, lines 35-45, col. 6, lines 60-69, col. 10, lines 15-25). Anderson et al. teach the use of coloring on a edge to better absorb infrared radiation to raise the temperature to heat seal the edge of the film (abstract). The instant invention claims a printed area on the edge rim of a film lid to better absorb radiation in order to heat shrink the film. It would have been obvious to one of ordinary skill in the art to direct the infrared radiation of Heilman et al. directly on the edge of Heilman et al. in order to better shrink the transparent edge of Heilman et al. because of the teachings of Konger to use intense direct radiation on overhanging edges to be shrunk. It further would have been obvious to color the edge of the film of Heilman et al. in view of Konger in order to use less intense infrared energy but still cause shrinking in order to save energy because of the teachings of Anderson et al. that use of opaque areas increase absorbance of infrared radiation. Use of film in a roll to make lids, and printing and use of tint to create opaque areas for infrared absorption are conventional.

2. Claims 36-46 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3, 4, 5 and 19 of U.S. Patent 5,993,942. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims differ only in the language used to describe the same structure.

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(11) Response to Argument

Appellant argues that Heilman et al. does not teach using infrared rays (radiant heat) directly on the edge of a lid cover and that at best Konger teaches hot air generated by infrared rays being applied directly to the cover edge instead of the rays themselves being directly applied to the cover edge and that therefore there is no motivation to transfer the teaching of Anderson et al., that a color area will aide absorption and heating of a section of packaging film material that is exposed to direct infrared radiation, to the film edge of Heilman et al. The examiner disagrees with appellant's argument on two grounds. The first is that the IR lamps of Konger (element 94 in Figure 5) do direct rays onto the overhanging edge of the cover film for the purpose of first shrinking the edges around the bottom of the pallet. This is called direct radiant heat in numerous passages of Konger that are cited above. A reasonable reading of the reference is that a least a portion of these rays do interact directly with the film even if another portion pass through the film and are absorbed by the load with a subsequent rise in temperature of the air around the edge of the film. Beyond this argument, even if both the films of Heilman et al. and Konger are found not to be heated directly by IR beams, there are explicit teachings in both references of the need to first heat only the edge of the film (see the above cited passages regarding Konger and the last two sentences on page 10 of Heilman et al). Anderson et al. clearly teaches a way to increase the effectiveness of heating films with IR radiation that is directed to a specific area. Given the teachings of Heilman et al. and Konger of the desirability of heating only the edge portions first, it would have been obvious

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to look to Anderson et al. for a specific means to do this efficiently. Appellant argues that Anderson et al. has nothing to do with heat shrink film. The position of the examiner is that Anderson et al. is in the plastic lid art and packaging film material art (col. 1, lines 15-35) and that one of ordinary skill in these arts would readily transfer directed film heating methods from Anderson et al. to Heilman et al. and Konger, given the explicit teachings in the latter references of the desirability of directed heating.

Regarding the double patenting rejection, the examiner does not believe there is any reason to link the outcome of the obviousness type double patenting rejection to the status of the art rejection. These are separate rejections that rise and fall on their own merits. The examiner does note that Konger is not cited as art of record on the face of the '942 patent. Appellant has offered no other argument regarding the obviousness type double patenting rejection.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Ellis P. Robinson
SPE Art Unit 1772
Conferee



WILLIAM P. WATKINS III
PRIMARY EXAMINER

Terrel Morris 
SPE Art Unit 1771
Conferee

WW/ww
June 14, 2000

Brian G. Bembenick
Thomas E. Kocovsky
Fay, Sharpe, Fagan, Minnich & McKee
1100 Superior Avenue
Suite 700
Cleveland, Ohio 44114